Paper No. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte KENNETH E. FLICK

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Appeal No. 2003-0287
Application No. 09/034,963

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ON BRIEF

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Before THOMAS, HAIRSTON, and BARRETT, Administrative Patent Judges.
HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 8, 11, 14, 21, 25 and 28.

The disclosed invention relates to a portable vehicle security system programmer in wireless communication with a programmable vehicle security system.

Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. A combination of a portable vehicle security system programmer and a programmable vehicle security system temporarily connected in wireless communication therewith, the vehicle security system being switchable to a programming mode responsive to a programming mode signal and when in the programming mode setting a plurality of programmable features responsive to feature programming signals, said portable vehicle security system programmer comprising:

a portable housing;

wireless programming mode means in said portable housing for wirelessly communicating to the programmable vehicle security system a programming mode signal;

a plurality of manually settable switches carried by said portable housing, each manually settable switch having a plurality of manually settable switch positions in which the switch will remain until a different switch position is manually set by a user;

indicia on said housing adjacent respective manually settable switches to identify respective programmable features associated therewith; and

wireless feature programmer means in said portable housing for wirelessly communicating to the programmable vehicle security system a plurality of feature programming signals based upon the plurality of manually settable switches.

The references relied on by the examiner are:

Grossheim et al. (Grossheim)	4,794,368	Dec. 27, 1988
Suman et al. (Suman)	5,113,182	May 12, 1992
Sollestre et al. (Sollestre)	5,864,297	Jan. 26, 1999 (filed Apr. 20, 1995)

Claims 1, 8, 11, 14, 21, 25 and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Suman in view of appellant's admitted prior art, Sollestre and Grossheim.

Reference is made to the brief (paper number 22) and the answer (paper number 23) for the respective positions of the appellant and the examiner.

OPINION

For all of the reasons expressed by the appellant, and for the additional reasons set forth infra, we will reverse the obviousness rejection of claims 1, 8, 11, 14, 21, 25 and 28.

At the outset, we agree with the appellant's argument (brief, page 9) that the statement "wireless communication techniques may also be used" is an expression as to how the disclosed invention may be implemented, and is not an admission by appellant. As this statement is part of appellant's disclosed invention, the examiner may not properly rely on it to establish a prima facie case of obviousness.

We additionally agree with the appellant's argument (brief, pages 8 and 9) that the control module 30 in Suman is permanently installed within the vehicle via the pin connector 38, and does not use wireless programming techniques. The manually programmable switches 31 through 35 are located on the control module 30 (Figure

2), and the conventional key fob remote transmitter 20 is the only portion of the Suman system that uses a wireless communication technique to make contact with the vehicle (Figure 1).

Sollestre uses a key fob transmitter T that can be placed in a programming mode by depressing certain function keys on the key fob for a minimum period of time (column 2, lines 56 through 62; column 8, lines 11 through 18). The programming mode is used by Sollestre to reprogram the receiver R so that it will accept signals from a different transmitter (Abstract). The key fob in Sollestre makes use of standard unlock, lock and panic buttons (Figure 1), and does not use switches that maintain a set switch position "until a different switch position is manually set by a user" as claimed by appellant.

With respect to the teachings of Grossheim, we agree with the appellant's argument (brief, pages 11 and 12) that the personal computer programmer 105 referenced by the examiner (answer, page 6) is connected to the security system via a serial interface cable (column 14, line 56 through column 15, line 3), and does not use wireless technology.

In summary, the obviousness rejection is reversed because we agree with the appellant's arguments (brief, pages 12 and 13) that the applied references "fail to teach or even suggest a portable

vehicle security system programmer for wirelessly communicating to a programmable vehicle security system a plurality of feature programming signals based upon a plurality of manually settable switches," and that the examiner has used impermissible hindsight reconstruction to reject the claims on appeal.

DECISION

The decision of the examiner rejecting claims 1, 8, 11, 14, 21, 25 and 28 under 35 U.S.C. § 103(a) is reversed.

REVERSED

JAMES D. THOMAS Administrative Patent Judge	)	
KENNETH W. HAIRSTON Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
LEE E. BARRETT Administrative Patent Judge	)	

KWH/lp

ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST P. A.,
1401 CITRUS CENTER
255 SOUTH ORANGE AVENUE
P. O. BOX 3791
ORLANDO, FL 32802-3791